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State of New Jersey

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February 1, 1999

CHRISTINE TODD WHITMAN
Governor

PETER VERNIERO
Attorney General

JEFFREY J. MILLER
Assistant Attorney General
Director

Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

Re: MUR 4875 -- Request to Dismiss Complaint

Dear Counsel:

This office represents the New Jersey Public Broadcasting Authority ("NJPBA" or "NJN"), respondent in the above-referenced matter. This letter shall constitute NJPBA's response to the complaint. NJPBA has previously completed and filed with your office a Statement of Counsel Designation confirming this office's representation of NJPBA. Additionally, by our letter dated January 15, 1999, we have previously requested that the time for NJPBA to file this response be extended to February 9, 1999.

NJPBA submits that Federal Election Commission ("FEC") has no jurisdiction over the matters raised in the complaint. The gravamen of the complaint is that the broadcasting system that NJPBA operates allegedly failed to include "independent" candidates for Representative from the 12th Congressional District in an alleged debate. On this basis, the complainant asks the FEC for three forms of relief:

- that FEC "sanction and otherwise reprimand NJN" (Complaint, Relief section ¶¶ 1, 2);
- that the Internal Revenue Service disallow all deductions allegedly made by third parties to NJN" (Complaint, Relief section ¶ 3);

*It should be noted that NJPBA does not directly receive charitable contributions. NJPBA is the beneficiary of the NJN Foundation, a non-profit corporation organized under the laws of the State of New Jersey, which is a tax-exempt entity under 26 U.S.C. § 501(c)(3) and is qualified to receive tax-deductible contributions under 26 U.S.C. § 170(c).

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- that the United States Attorney "review all allegation stated herein in order to determine if any laws of the United States were violated" (Complaint, Relief section ¶ 4).

NJPBA respectfully submits that the FEC is without power to order any of the relief sought.

First, it is clear that the FEC's enforcement powers extend only to the Federal Campaign Funds Act, 2 U.S.C. §§ 431, et seq., and chapters 95 and 96 of the Internal Revenue Code, 26 U.S.C. §§ 9001-9042. Complainant has not alleged that NJPBA violated any of these statutes. At best, the complaint raises the issue of respondent's status under sections 170 and 501 of the Internal Revenue Code, which are not part of chapters 95 and 96. Respondent's status under sections 170 and 501 is of no moment in this matter, because the FEC has no jurisdiction over those sections of the Internal Revenue Code.

Second, even if the subject matter of the complaint were within the FEC's jurisdiction, the nature of the relief sought by complainant is beyond the FEC's powers. 2 U.S.C. § 437d enumerates the FEC's powers. The statute does not grant to the FEC the power to "sanction" or "reprimand" a news organization. The statute does not grant FEC the power to order the Internal Revenue Service to disallow the deductions of particular taxpayers. Nor may the FEC order the United States Attorney to investigate complainant's allegations.

For the foregoing reasons, respondent respectfully submits that the complaint should be dismissed.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 

Peter M. Ullman
Deputy Attorney General